

Chapter III. Civil Rules and Civil Case Management

It is the policy of the Superior Court of California, County of Kern, to manage all civil cases from the date of filing through final disposition. All parties are subject to this policy and are expected to proceed diligently and expeditiously in preparing civil cases for trial. (Effective 7/1/03)

"Civil cases" as used in these Rules shall not include domestic relations/family law matters, juvenile court matters, probate matters, special petitions, actions brought for equitable relief only entitled to preferential setting for trial without the use of juries, asset forfeiture cases (Health and Safety Code Sections 11470 et seq.), and criminal matters. All other cases will be included and classified at filing as general civil. (Effective 7/1/03)

Nothing in these rules shall prevent a court, in an individual case, from issuing an exception order based on a specific finding that the interests of justice require a modification of the routine processes as prescribed by these rules. (Effective 7/1/03)

In civil matters filed in the Regional Courts, the court shall determine the appropriate location for the trial at the case management conference. The judge, using information concerning the parties' residences, the attorneys' residences, the likely witness' locations, estimated trial days, and other relevant factors, will determine the need to retain the case at the Regional Division for trial or to transfer the matter to the Metropolitan Court Civil Division. (Effective 7/1/03)

If the matter is to be tried at the Metropolitan Division, the judicial officer shall set a trial setting conference no later than three (3) weeks following the case management conference. The Metropolitan Court Civil Division shall subsequently assign a judge for all purposes upon receipt of the filing, and notify all parties of the time and Department for the Trial Setting Conference. (Effective 7/1/03)

A transfer to the Metropolitan Court Civil Division under this policy shall not affect the time standards for disposition of civil cases in this county. (Effective 7/1/03)

Rule 3.1 Application of Rules - Case Types (Effective 7/1/03)

These rules apply to limited and unlimited jurisdiction general civil cases filed in the Kern County Superior Court. (Effective 7/1/03)

Rule 3.2 Facsimile Filing of Civil Actions (Effective 7/1/03; rev. 1/1/06)

The Superior Court of California, County of Kern, have elected to allow the filing of civil documents by facsimile transmission through Official Payments

Corporation. California Rules of Court 2.300 through 2.306 apply to facsimile filing of civil documents by attorneys or parties without attorney. (Effective 7/1/03)

- (a) To fax directly to any court's 800 Audiotex fax number, filing attorneys and parties should call Official Payments Corporation at (800) 322-4945 to register their fax number, credit card number and expiration date. (Effective 7/1/03; rev. 7/1/04; rev. 1/1/06)
- (b) The court's facsimile machine shall be available 24 hours a day, although filings received after 5:00 p.m. or on Court Holidays shall be deemed filed on the next court day. (Effective 7/1/03)
- (c) If any of the Rules are not followed, including those provisions of the applicable rules not printed here, the court will not accept the filing of the document. The proper transmission of a document by a facsimile machine is the responsibility of the filing attorney or party, not the court. The filing agency must pay all applicable fees at the time of filing. (Effective 7/1/03)
- (d) Confirmation of the filing of the document shall be given by the standard confirmation of facsimile machines. The court will not fax a copy of the cover sheet back to the filing attorney or party. (Effective 7/1/03)

Rule 3.3 Telephonic Court Appearances (Effective 7/1/03; rev. 7/1/09)

Within the Superior Court of California, County of Kern, the Superior Court Division and Departments within said Division listed in Addendum 2 allow telephonic court appearances through CourtCall. Telephonic court appearances are permitted for non-testimonial hearings and conferences in general civil cases and in unlawful detainer and probate proceedings. A party may appear by telephone at the following hearings, conferences and proceedings: (1) case management conferences, provided the party has made a good faith effort to meet and confer and has timely served and filed a case management statement before the conference date; (2) trial setting conferences; (3) hearings on law and motion, except motions in limine; (4) hearings on discovery motions; (5) status conferences, including conferences to review the status of an arbitration or mediation; (6) hearings to review the dismissal of an action. CourtCall may be arranged by contacting CourtCall, LLC at 6383 Arizona Circle, Los Angeles, California 90045, toll free telephone number (888) 88-COURT or (310) 342-0888, fax number (310) 743-1850 or (888) 88FAXIN. Court Call arrangements must be confirmed no later than 3:00 p.m. the day before the scheduled hearing. Counsel should refer to California Rules of Court 3.670, as amended 1/1/08. (Effective 7/1/03; rev. 7/1/09)

Rule 3.4 Pretrial Hearings and Other Motions - Civil (Effective 7/1/03)

All Law and Motion matters will be heard pursuant to the courtroom schedule (Addendum 1A through 1M. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. Hearing dates for Law and Motion matters in Metro Division are not required to be pre-cleared. However, hearing dates for ex parte matters must be pre-cleared with the Fast Track clerks. In the Regional Divisions, a Civil Law and Motion date can be obtained at the court Civil Division office/counter or by calling the Civil Division as follows: (Effective 7/1/03)

Superior Court - East Division (Ridgecrest)	(760) 384-5900
Superior Court - East Division (Mojave)	(661) 824-7100
Superior Court - East Division (Kern River)	(760) 549-2000
Superior Court - North Division (Delano)	(661) 720-5800
Superior Court - North Division (Shafter)	(661) 746-7500
Superior Court - South Division (Lamont)	(661) 868-5800
Superior Court - South Division (Taft)	(661) 763-8531

Rule 3.4.1 Motions for New Trial or Motions to Set Aside and Vacate (Effective 7/1/03)

Motions for a new trial or motions to set aside and vacate a judgment shall be heard by the trial judge. When the trial judge is unavailable, the motion shall be noticed in a Department and before a judge designated by the Presiding Judge pursuant to Code of Civil Procedure Section 663. A motion for a new trial shall be noticed by the Clerk of the Court in accordance with Code of Civil Procedure Section 661. (Effective 7/1/03)

Rule 3.4.2 Order to Appear for Judgment Debtor Examination (Effective 7/1/09)

There shall be no continuances granted if Judgment Creditor is unable to serve the Judgment Debtor. If not able to serve, must re-file new Order to Appear along with the appropriate filing fee. (Effective 7/1/09)

Rule 3.5 Ex Parte Applications and Orders (Effective 7/1/03)

All ex parte applications which require notice will be noticed in the Civil Division or Direct Calendar Court for a ruling. All ex parte matters must be precleared. Copies of all papers to be presented at the hearing shall be filed with the court no later than 12:00 noon the day before the scheduled hearing time. These documents may be "faxed." (Effective 7/1/03)

- (a) The Presiding or Direct Calendar Judge shall be available for the signing of ex parte orders or shall designate a judge or judges who will be available for such signing. (Effective 7/1/03)

- (b) Attorneys shall not seek to have ex parte orders signed by judges other than those assigned by the Presiding Judge. (Effective 7/1/03)
- (c) Requests for ex parte orders shall be based solely on the moving papers without oral argument or comment by counsel, but the judge may, in his or her own discretion, exempt matters from this provision. (Effective 7/1/03)
- (d) Notice shall be in accordance with California Rule of Court 3.1203(a)(b), and all paperwork shall be submitted no later than 12:00 noon the day before the scheduled hearing. (Effective 7/1/03)

Rule 3.6 Juror Fees and Expenses (Effective 7/1/03)

Jury fees and mileage shall be governed by the Code of Civil Procedure, Section 631, et seq. Unless otherwise ordered by the Presiding Judge, the Clerk's Office will not accept client's personal checks for daily jury fees. These fees should be paid by the attorney's firm's check. (Effective 7/1/03)

Rule 3.7 Actions on Promissory Notes and Contracts Providing for the Payment of Attorney's Fees (Effective 7/1/03)

- (a) The following attorney's fees shall be awarded under normal conditions in actions on promissory notes and contracts providing for the payment of attorney's fees and foreclosures: (Effective 7/1/03)

Default action on note or contract, exclusive of costs: (Effective 7/1/03)

20% of the first \$5,000 with minimum fee of \$150.00;
15% of the next \$10,000;
10% of the next \$35,000;
5% of the amount over \$50,000. (Effective 7/1/03)

In an action upon contract providing for an attorney's fee, the clerk shall include in the judgment an attorney's fee in accordance with this schedule (not to exceed the amount prayed for). (Effective 7/1/03)

- (b) Additional Fees (Effective 7/1/03)

A petition for compensation for additional services rendered under Subsection (a) of this rule, or in a probate or other proceeding, shall include an itemized statement of the services rendered or to be rendered by the attorney and a reference in the caption and prayer to the request for additional fees. An appearance by the attorney or the parties is not normally required. In determining such fees, the court shall consider the experience of counsel, the time expended, the complexity of the issues, the amount involved and the results achieved. (Effective 7/1/03)

Rule 3.8 Selection of Monitoring Judge and Setting of Case Management Conference
(Effective 7/1/03)

- (a) At the time the complaint is filed, the clerk will select a monitoring judge at random by drawing from the pool of judges assigned and shall set a case management conference for the case on said judge's calendar not more than 180 days thereafter, and issue notice thereof, which notice will be served on all defendants by plaintiff and on all cross-defendants not already parties to the action by cross-complainants. The term "monitoring judge" as used in these Rules shall include direct calendaring judges as well as judges who are assigned cases for "all purposes" by the Presiding Department. (Effective 7/1/03)
- (b) The monitoring judge to whom the case is assigned shall be responsible to move the case along to an orderly disposition under these Rules. All motions provided for under these Rules shall be made to the monitoring judge. If the assigned judge is operating a direct calendar court, the assignment shall be deemed for "all purposes." (Effective 7/1/03)

Rule 3.9 Discovery (Effective 7/1/03)

During the period prior to the case management conference, the parties are, at a minimum, to engage in the basic discovery necessary to determine the presence or absence of all necessary parties in the action, to determine the issues which are in actual controversy and those without substantial controversy, and to properly evaluate the case for meaningful settlement negotiations. (Effective 7/1/03)

Rule 3.10 Final Case Management Conference (Effective 7/1/03; rev. 1/1/06)

- (a) At least five (5) days prior to the final case management conference, or at least fifteen (15) days prior to the date the matter is set for trial in the absence of a final case management conference, each party shall serve on every other party and submit to the court the following: (Effective 7/1/03)
 - (1) Said party's proposed jury instructions. All parties are invited to use the Instruction Request form for the standard CACI instructions. If any standard instructions are not on the request form, or if any special instructions are going to be requested, they must be served with the request form. (Effective 7/1/03; rev. 1/1/06)
 - (2) All motions in limine in written form, together with any points and authorities in support thereof. (Effective 7/1/03)
 - (3) A list of all witnesses that said party intends to call in his or her case in chief. (Effective 7/1/03)

- (4) A proposed generic statement of the case to be read to the jury at the beginning of the case. (Effective 7/1/03)
 - (5) A list of all photographs, documents, physical objects or other tangible things that said party intends to have marked as an exhibit and introduced in evidence at the time of trial. (In matters where a final case management conference has been set, said items will actually be brought to the final case management conference for examination). (Effective 7/1/03)
- (b) Prior to the final case management conference, or prior to the trial if no final case management conference is set, counsel will confer in an effort to resolve the jury instructions, issues raised in the motions in limine, the generic statement of the case, and the admissibility of the various photographs, documents, physical objects and other tangible things included in each party's exhibit list. In addition, counsel shall review the witness lists and make their best estimate of the time anticipated for the direct and cross-examination of each of the witnesses. Counsel will also attempt to work out stipulations concerning issues which are not contested. At the time of the final case management conference or at the time of trial, if no final case management conference is set, efforts will be made to resolve the remaining issues and, to the extent that they are unresolved by agreement, will be ruled upon by the court. Final Case Management orders shall be generated settling the jury instructions (subject to augmentation after the evidence is received), providing rulings on the motions in limine, providing for the admission of certain photographs, documents, physical objects or other tangible things, and settling the generic statement of the case. A master list of witnesses and the anticipated time involved for each witness will also be generated for use of court and counsel. Such other orders will be made as may be appropriate for the management of the anticipated trial. (Effective 7/1/03)
- (c) All final case management documents shall be filed (pursuant to California Rules of Court 3.1110) under a cover sheet which lists the documents submitted. (Effective 7/1/03)

Rule 3.11 Stayed Cases (Effective 7/1/03)

When an action subject to these rules is stayed for one or more of the reasons set forth in subparagraph (d) of Rule 3.1385 of the California Rules of Court, the responsible party, in addition to filing the notice of stay and notice that the stay is vacated or no longer in effect, shall file with the court on a periodic basis no less frequently than every ninety (90) days, a status report advising the court, to the extent applicable, of the following: (Effective 7/1/03)

- (a) Efforts being made to obtain relief from the stay so that the action in this court can proceed. (Effective 7/1/03)
- (b) The progress being made in the federal or higher state court action in which the stay was issued to resolve the issues which would otherwise require litigation in this court. (Effective 7/1/03)
- (c) The propriety of severing parties, causes of action and/or cross-actions which would be subject to the stay and proceeding with the balance of the litigation. (Effective 7/1/03)

Rule 3.12 Disallowance of Interruptions (Effective 7/1/03)

Once the case has been assigned to a trial court by the Presiding Department or called to trial by a Direct Calendar Department, it shall proceed without interruption to conclusion. No adjournment will be allowed to explore settlement, conduct discovery, marshal evidence or prepare for the presentation of any subsequent portion of the trial, except in unusual circumstances without fault of the moving party where good cause is shown in the sound discretion of the trial judge. It is also anticipated that each party will have his or her witnesses available to present his or her case without interruption or delay. An unexcused inability of a party to proceed because of a failure to schedule adequate witnesses, or otherwise, may result in sanctions being imposed, including a determination by the trial judge that said party has rested. (Effective 7/1/03)

Rule 3.13 Differential Case Management (Effective 7/1/03)

Pursuant to California Rule of Court 209.1(c), all general civil cases are presumed to be Plan One (1) cases subject to disposition within twelve (12) months from date of filing of complaint. (Effective 7/1/03)

Rule 3.14 Collection Cases (Effective 7/1/03; rev. 1/1/07)

In the event that during the pendency of the action, whether the defendants have appeared or not, the parties agree to resolve that matter with a program of periodic payments, all monitoring and time requirements can be terminated, provided that the conditions in (a) through (d) below are met. If the periodic payment agreement satisfies these conditions, the case will be deemed "disposed of" and will no longer be monitored. (Effective 7/1/03; rev. 1/1/07)

- (d) The parties file with the court a written stipulation and agreement setting forth in detail the terms of the periodic payments which, if made, will fully satisfy the obligations which generated the litigation. (Effective 7/1/03)
- (e) That the stipulation and agreement further provide that on full performance of the agreement by the defendants, plaintiff will request a dismissal of the entire action with prejudice; and in the absence of such a

request, the court may dismiss the action on its own motion, without notice to the parties, after forty-five (45) days has expired from the due date of the last payment unless plaintiff, within that time, requests entry of judgment as provided in Subparagraph (c). (Effective 7/1/03)

- (f) That the stipulation and agreement further provide that in the event defendant fails to make any of the payments required, plaintiff may, by written declaration, notify the court of defendant's default and the amount then due under the agreement and request that the court enter judgment accordingly, together with costs of suit. (Effective 7/1/03)
- (g) That the stipulation and agreement be unconditional so that a judicial determination will not be required and the court's only remaining function in the case would be to enter a dismissal as provided in Subparagraph (b) or a judgment as provided in Subparagraph (c). (Effective 7/1/03)
- (h) That the parties shall file with the court a request for dismissal without prejudice reserving to the court jurisdiction to set aside such dismissal to enter judgment as provided in (c) hereof. (Effective 7/1/03)

RULE 3.14.1 Application of Rules 3.14.2 and 3.14.3 (Adopted 1/1/08)

Rules 3.14.2 and 3.14.3 apply only to those cases designated on the civil case cover sheet as Rule 3.740 collections. (Adopted 1/1/08)

RULE 3.14.2 Time for Filing (Adopted 1/1/08)

- (a) All named defendants must be served and a proof of service must be filed or an order for publication of the summons must be obtained as to each named defendant within one hundred eighty (180) days of the date of filing of the complaint. (Adopted 1/1/08)
- (b) At the time the complaint in a Rule 3.740 collection action is filed, the clerk shall issue an order to show cause re dismissal to the plaintiff designating a date of hearing on the order to show cause not less than one hundred eighty (180) days nor more than two hundred (200) days after filing. If not less than ten (10) days prior to the order to show cause the plaintiff files a proof of service or an order for publication of the summons as to each named defendant or answer or other responsive pleading filed by each named defendant, a request for entry of default, a default judgment, a request for dismissal of the entire action, a stipulated judgment or stipulation for entry of judgment, or a notice of settlement, the order to show cause will be continued by the clerk to a date no less than three hundred forty (340) days and nor more than three hundred sixty (360) days after the date of filing of the complaint. The order to show cause

shall be vacated if the plaintiff obtains a default judgment at least ten (10) court days before the order to show cause hearing. (Adopted 1/1/08)

RULE 3.14.3 Case Management Conferences (Adopted 1/1/08)

- (a) Upon the filing of an answer or other responsive pleading by any named defendant in a collections case, the clerk shall set a case management conference not less than ninety (90) days following the date of filing of the first answer or responsive pleading. The clerk shall give notice to all parties appearing in the action of the date, time and department of the case management conference. (Adopted 1/1/08)
- (b) The plaintiff shall serve written notice of the case management conference on any parties appearing in the action after service of notice of the case management conference by the clerk. (Adopted 1/1/08)
- (c) All parties who have appeared in the action shall file with the court and serve on all parties a case management statement no less than fifteen (15) days prior to the date of the case management conference. Failure to timely file and serve a case management statement constitutes a waiver of any objection to action taken by the court at the case management conference, including setting the case for trial, ordering the case to judicial arbitration, or setting a mandatory settlement conference. (Adopted 1/1/08)
- (d) If, based on its review of the written submissions of the parties and such other information as is available, the court determines that appearances at the conference are not necessary, the court may issue a case management order and notify the parties that no appearance is required. (Adopted 1/1/08)
- (e) At the case management conference, counsel for each party and each self-represented party must appear personally or by telephone as provided in California Rules of Court Rule 3.670 and Rule 3.3 of these rules; must be familiar with the case; and must be prepared to discuss and commit to the party's position on the issues listed in Rules 3.724 and 3.727 of the California Rules of Court. (Adopted 1/1/08)

Rule 3.15 Uninsured Motorist Cases (Effective 7/1/03)

- (a) At the time of filing a complaint for personal injury or wrongful death or at any time thereafter, plaintiff may file a declaration with the court

establishing the items set forth in (1) through (4) below. On receipt of such a declaration, the court may classify the case as "uninsured motorist". (Effective 7/1/03)

- (1) All the named defendants are believed to be uninsured and the action is filed to protect the running of the statute of limitations in the event that insurance is later discovered or plaintiff, after filing the action, has learned that all the defendants are uninsured. (Effective 7/1/03)
 - (2) Plaintiff is proceeding to arbitration with his or her insurer under the uninsured motorist provision of his or her insurance policy, and does not intend to proceed in the action against the uninsured defendants. (Effective 7/1/03)
 - (3) In resolving the case with the defendants, it has been determined that defendants were underinsured within the meaning of plaintiff's policy which provides underinsured motorist's coverage. (Effective 7/1/03)
 - (4) Plaintiff's counsel has sought from plaintiff's insurer a concession of uninsured status of defendant to avoid the filing of the action or to dismiss it and plaintiff's insurer has refused. (Effective 7/1/03)
- (b) Cases classified as uninsured motorist will be placed on a review calendar and plaintiff will file a certificate of progress every 90 days advising the court of the status of his claim against his insurer and the progress of the arbitration proceeding, if any. (Effective 7/1/03)
- (c) In the event that plaintiff's claim against his insurer is not resolved within 180 days after being designated uninsured motorist, the court may require plaintiff's counsel to appear for a hearing to determine when the matter will be resolved and the action dismissed or reclassified as general civil litigation. (Effective 7/1/03)
- (d) When plaintiff's claim is resolved against his insurer, plaintiff's counsel shall give notice to the insurer that the action is pending in this court and shall seek consent from the insurer to dismiss the action. The notice shall contain the complete title of the cause, case number and a statement to the effect that the case is governed by these Rules and that, effective as of that date of the notice, the case is reclassified as general civil litigation and a proof of service or certificate of progress is due sixty (60) days therefrom under California Rule of Court 3.110. In filing the original of such notice

with the court with appropriate proof of service, plaintiff's attorney shall provide the court with the name, address and phone number of the appropriate representative of plaintiff's insurer. The filing of such a notice with the court does not preclude the need to file a formal substitution of attorneys unless plaintiff's attorney intends to remain of record. (Effective 7/1/03)

Rule 3.16 Alternative Dispute Resolution (Effective 7/1/03)

Rule 3.16.1 Alternative Dispute Resolution Policy (Effective 7/1/03)

It is the policy of the Superior Court that the parties in every general civil case participate in voluntary mediation, arbitration, neutral evaluation, an early settlement conference or some other appropriate alternative dispute resolution process prior to trial. (Effective 7/1/03)

Rule 3.16.2 Mandatory Arbitration (Effective 7/1/03)

It is the policy of the Superior Court that Plan One (1), Two (2) and Three (3) at-issue long cause civil actions except those excluded by statute, pending on or filed after the operative date of these rules be submitted to arbitration. (Effective 7/1/03)

Rule 3.16.3 Order to Show Cause (OSC) Procedure (Effective 7/1/03)

Upon appointment of the arbitrator, the court will set the case for an OSC as to why the matter has not been arbitrated within the ninety (90) day arbitration period. Upon timely completion of arbitration, the OSC will be removed from the calendar. (Effective 7/1/03)

Rule 3.16.4 Voluntary Civil Mediation (Effective 7/1/03)

Rule

3.16.4.1 Purpose of Program (Effective 7/1/03)

- (a) The purpose of the civil mediation program is to promote and facilitate the voluntary mediation of civil disputes. (Effective 7/1/03)
- (b) This program is not established pursuant to the Civil Mediation Act, Code of Civil Procedure section 1775, et seq. (Effective 7/1/03)

Rule

3.16.4.2 Eligible Cases (Effective 7/1/03)

The mediation program provided for in these rules is available to all general civil cases, regardless of the type of action or relief sought. (Effective 7/1/03)

Rule

3.16.4.3 Election to Mediate (Effective 7/1/03)

Parties to the action may opt for mediation only upon the voluntary agreement of all parties to the case. (Effective 7/1/03)

Rule

3.16.4.4 Mediation in Lieu of Judicial Arbitration (Effective 7/1/03)

- (a) Parties to any civil action assigned to judicial arbitration may elect voluntary mediation. Parties who seek to mediate a case in lieu of judicial arbitration must file a stipulation to mediate with the Court no later than the initial case management conference. (Effective 7/1/03)
- (b) The Court must exempt a case from judicial arbitration under California Rule of Court 1600.5(f) or (g) upon filing a stipulation to mediate. (Effective 7/1/03)
- (c) Upon conclusion of the mediation, parties must file a Statement Regarding Mediation which states that mediation has been completed and that the parties to the action or the authorized representatives of the insured's insurance company participated in the mediation. (Effective 7/1/03)

Rule

3.16.4.5 No Tolling of Time Limits (Effective 7/1/03)

- (a) The election to mediate in lieu of judicial arbitration will not suspend any time periods specified by statute, the California Rules of Court or these local rules. (Effective 7/1/03)
- (b) Absent an order providing for additional time, actions in which mediation has not taken place within the period specified herein, will be subject to an order to show cause why the action should not be dismissed, the answer stricken, or other appropriate sanctions imposed. (Effective 7/1/03)

Rule

3.16.4.6 Selection of Mediation Provider (Effective 7/1/03)

The parties must select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The mediation provider need not be an attorney. The parties are not required to select a mediation provider from the Court's list. (Effective 7/1/03)

Rule

3.16.4.7 Payment of Mediation Provider (Effective 7/1/03)

The cost of mediation must be borne by the parties equally unless the parties agree otherwise. (Effective 7/1/03)

Rule 3.16.5 Settlement Conference (Effective 7/1/03)

On a date not less than twenty (20) days nor more than forty (40) days from the trial date, a settlement conference will be held pursuant to California Rule of Court 3.1380. The Court shall designate the date, time and place of such settlement conference. (Effective 7/1/03)

Rule 3.17 Unlawful Detainers (Effective 1/1/07)

Rules 3.17.1 through 3.17.16 apply to all unlawful detainer and forcible detainer actions filed after January 1, 2007. (Effective 1/1/07)

Rule 3.17.1 Filing the Complaint (Effective 1/1/07)

- (a) All complaints for unlawful detainer shall, if based upon a notice terminating the tenancy or right to possession, be accompanied by the original such notice attached as an exhibit to the complaint as required by Code of Civil Procedure Section 1166. (Effective 1/1/07)
- (b) A complaint for unlawful detainer of residential property shall be accompanied by a copy of any written rental agreement or lease regarding the premises, including any amendments or addenda to such agreement, as required by Code of Civil Procedure Section 1166, unless the complaint alleges that the lease or rental agreement is oral, that neither the original nor a copy of the written rental agreement or lease is in the possession or control of the plaintiff, or the action is based solely on subdivision (2) of Code of Civil Procedure 1161. (Effective 1/1/07)
- (c) At the time the complaint in an unlawful detainer action is filed, the clerk shall issue an order to show cause re dismissal to the plaintiff designating a date of hearing on the order to show cause not more than forty-five (45) days after filing. The order to show cause will be dropped from calendar upon filing of an answer or other responsive pleading, an amended complaint converting the action to an ordinary civil action, a request for entry of default, a request for dismissal, a stipulated judgment or stipulation for entry of judgment, or a notice of settlement. (Effective 1/1/07)
- (d) Unless otherwise ordered, the minimum undertaking required for an order for immediate possession of the premises pursuant to Code of Civil Procedure Section 1166a shall be ten (10) times the monthly rental or \$2,500, whichever is greater. (Effective 1/1/07).

Rule 3.17.2 Proof of Service (Effective 1/1/07)

- (a) A proof of service or application for service by posting and mailing

pursuant to Code of Civil Procedure Section 415.45 must be filed within twenty (20) days of the date of filing of the complaint, unless an answer or other responsive pleading has been filed. (Effective 1/1/07)

- (b) All applications for service by posting and mailing pursuant to Code of Civil Procedure Section 415.45 shall include a date by which service shall be completed, which date shall not exceed ten (10) days following the date of filing of the application. (Effective 1/1/07)
- (c) No application for service by posting and mailing pursuant to Code of Civil Procedure Section 415.45 shall be granted unless the requirements of due diligence have been satisfied. The requirements of due diligence shall be deemed satisfied if the declaration of attempted service shows at least three (3) separate attempts to serve, on three (3) different dates, not more than two (2) of which may be on a holiday as defined in Code of Civil Procedure Section 10, with at least one (1) such attempt before noon and one (1) such attempt after noon. (Effective 1/1/07)
- (d) In cases in which service of the summons and complaint is made by posting and mailing pursuant to Code of Civil Procedure Section 415.45, proof of service by posting and mailing shall be filed within ten (10) days of the date of issuance of the order permitting service pursuant to Code of Civil Procedure Section 415.45. (Effective 1/1/07)

Rule 3.17.3 Settlement (Effective 1/1/07)

- (a) A settlement agreement may provide that, in the event of default, the non-defaulting party may seek additional relief from the court by filing an ex parte application for such relief. Any settlement agreement providing for such ex parte relief shall contain one (1) of the following (Effective 1/1/07):
 - (1) A proof of service showing that the ex parte application was served on the defaulting party (Effective 1/1/07),
 - (2) A declaration stating either that notice of the filing of the ex parte application was given to the defaulting party, specifying how and when such notice was given (Effective 1/1/07),
 - (3) A declaration demonstrating that such notice should be excused pursuant to Rule 3.1204(b)(2) or (3) of the California Rules of Court. (Effective 1/1/07)
- (b) Unless notice is excused, the ex parte application or the declaration shall describe the relief requested, and the date and time of the hearing on the ex parte application. (Effective 1/1/07)
- (c) A hearing on the ex parte application shall be held no sooner than forty-

eight (48) hours after the later of the filing of the application or notice to the allegedly defaulting party unless such notice was excused. If service of the notice is by mail, then the hearing shall be held no sooner than five (5) days after the date of mailing. (Effective 1/1/07)

- (d) Objection, if any, to the ex parte application shall be by written declaration under penalty of perjury, filed and served on all interested parties at or prior to the time of the hearing, and shall state with specificity the grounds for such objection. (Effective 1/1/07)
- (e) Applications for further relief in cases in which the settlement agreement does not provide for an ex parte application procedure for further relief shall be upon noticed motion. There shall be a rebuttable presumption that applications for orders shortening time for hearing of such motions seeking possession and other cases in which time is of the essence are meritorious. (Effective 1/1/07)
- (f) Nothing in these rules shall preclude a party from seeking to enforce the terms of a settlement agreement in an unlawful detainer action by appropriate motion pursuant to Code of Civil Procedure Section 664.6 or other controlling authority. (Effective 1/1/07)

Rule 3.17.4 Stipulations for Entry of Judgment (Effective 1/1/07)

Any stipulation between parties that provides terms and conditions for settlement of an unlawful detainer action must include by entry of judgment (Effective 1/1/07):

- (a) A statement, pursuant to Rule 3.1385 of the California Rules of Court, that plaintiff will file a request for dismissal of the entire action either within forty-five (45) days of the date of the filing of the stipulation or upon some other specified date no more than ninety (90) days following the date of filing of the stipulation. (Effective 1/1/07)
- (b) A place for the court to set a date for an order to show cause re dismissal at which the parties may appear if the terms and conditions are not met and upon which the court may dismiss the case if the parties fail to appear and the plaintiff has not filed a request for dismissal as provided in Rule 3.17.4(a). (Effective 1/1/07)
- (c) If the stipulation is presented for court approval prior to the date of trial, and the parties do not intend to appear at trial, an order vacating the trial date. (Effective 1/1/07)
- (d) A clear and concise statement of the ex parte application, opposition and order process by which remedies are available to either party in the event of a default in any of the terms and conditions of the stipulation. The clerk shall not enter judgment upon the mere declaration of either party.

(Effective 1/1/07)

Rule 3.17.5 Setting Case for Trial (Effective 1/1/07)

- (a) Within twenty-five (25) days of the date of filing of the complaint, the plaintiff shall file a request to set for trial unless a request for entry of default or request for dismissal has been filed. (Effective 1/1/07)
- (b) The case will be set for trial not more than twenty (20) days after the date of filing of the memorandum to set the case for trial. The court shall give notice of trial in accordance with Code of Civil Procedure Section 594. (Effective 1/1/07)
- (c) If a jury is demanded, the clerk shall, in addition to the trial date, set the case for a case management conference with ten (10) days of the date of filing of the request to set for trial. (Effective 1/1/07)

Rule 3.17.6 Request/Counter Request to Set for Trial (Effective 1/1/07)

- (a) A request or counter request to set for trial shall be completed on the Judicial Council for Request/Counter Request to Set Case for Trial - Unlawful Detainer form UD-150. The filing of a request or counter request to set the case for trial shall be deemed a representation by such party that the case is at issue and will be ready for trial on the date first assigned for trial. (Effective 1/1/07)
- (b) Any other party to the action may file a counter-request to set the case for trial. Failure of any party to file a counter-request to set the case for trial shall be deemed agreement by the party failing to file with all the matters represented in the request to set the case for trial. (Effective 1/1/07)
- (c) The case will be set for trial within twenty (20) days of the date of filing of the request to set case for trial. (Effective 1/1/07)

Rule 3.17.7 Case Management (Effective 1/1/07)

All parties, or counsel if represented, shall appear at the case management conference. Parties or counsel appearing at the case management conference shall be fully prepared to discuss all aspects related to trial of the case, including the estimated time of trial and matters which may be stipulated to prior to trial. (Effective 1/1/07)

Rule 3.17.8 Default (Effective 1/1/07)

- (a) Request for entry of default shall be made within forty-five (45) days of the date of filing of the action unless an answer or other response has been filed, or the action is dismissed or finally disposed of in its entirety.

(Effective 1/1/07)

- (b) Plaintiff shall, within six (6) months of entry by the clerk of a default judgment for possession of the premises only, set the case for a default hearing for judgment for money damages, or shall submit a declaration pursuant to Code of Civil Procedure Section 585(b) and (d). Failure of the plaintiff to cause a request for judgment for such damages to be entered within six (6) months of the date of entry of a judgment for possession only shall result in an order to appear to show cause why sanctions for such failure shall not be imposed. Monetary or other appropriate sanctions may be imposed at the order to appear for failure to comply with this rule. (Effective 1/1/07)

Rule 3.17.9 Conversion of Cases to Ordinary Civil Action (Effective 1/1/07)

In the event possession becomes no longer an issue at any time prior to trial, or, in the event of an uncontested proceeding, prior to entry of judgment of possession, it shall be the duty of plaintiff to immediately notify the court. If, at any time prior to entry of judgment for possession, it appears that no defendant is in possession, or that possession is otherwise not an issue, then the trial date shall be immediately vacated, and the case shall be converted by the court to an ordinary civil action. Plaintiff shall thereafter have thirty (30) days within which to file an amended complaint, and the case shall be set for an order to show cause re dismissal to be heard forty-five (45) days following conversion of the action to an ordinary civil action. (Effective 1/1/07)

Rule

3.17.10

Motions for Summary Judgment or Summary Adjudication (Effective 1/1/07)

- (a) All motions for summary judgment or summary adjudication shall be filed with the court (Effective 1/1/07):
 - (1) At least five (5) days prior to the hearing if personally served on the opposing party, or (Effective 1/1/07)
 - (2) At least ten (10) days prior to the hearing if served on the opposing party by any other means of service. (Effective 1/1/07)
- (b) Opposition to a motion for summary judgment or summary adjudication shall be filed and served no later than one (1) court day prior to the date of hearing on the motion. (Effective 1/1/07)

Rule

3.17.11

Trial (Effective 1/1/07)

- (a) Trial will take place on the date scheduled unless continued by order upon properly noticed motion showing good cause for such continuance. (Effective 1/1/07)

- (b) Motions for continuance of the trial made on the date of trial are disfavored, and will be granted only upon a clear showing of good cause. (Effective 1/1/07)
- (c) The prevailing party after trial shall prepare the judgment. (Effective 1/1/07)
- (d) All unlawful detainer trials, including jury trials, shall be electronically recorded unless a party requests that the trial be stenographically recorded. Any request for stenographic recording shall be made in writing not less than five (5) days prior to the date the case is first set for trial. The party requesting stenographic recording shall post court reporter fees equal to one-half day's fees at the time the request is made. (Effective 1/1/07)

Rule
3.17.12

Jury Trials in Unlawful Detainer Actions (Effective 1/1/07)

- (a) Jury fees and court reporter's fees, if a court reporter is desired, shall be posted by the party requesting a jury not later than five (5) days prior to the date first assigned for trial. (Effective 1/1/07)
- (b) If the estimated time for trial exceeds one (1) calendar day, for each subsequent day of trial, the jury fees and court reporter's fees, if a reporter is desired, shall be posted by the party requesting the jury trial, by the close of business the day before the next scheduled trial date. (Effective 1/1/07)
- (c) All requested and relevant jury instructions shall be submitted to the court no later than 9:00 A.M. on the date first assigned for trial. (Effective 1/1/07)
- (d) Any and all motions, including motions in limine, shall be submitted in writing to the court no later than 9:00 A.M. on the date first assigned for trial. (Effective 1/1/07)
- (e) Case management conference will be set at the time jury is demanded. (Effective 1/1/07)
- (f) Failure to comply with any of the above will result in a waiver of jury and the trial will proceed immediately by court. (Effective 1/1/07)

Rule
3.17.13

Attorney's Fees (Effective 1/1/07)

- (a) In actions for unlawful detainer for possession of residential property, whether multi-family or single family, if the prevailing party is entitled to an award of attorney's fees the attorney's fees awarded by the court shall not, except upon good cause shown, exceed the following amounts (Effective 1/1/07):

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- (1) In cases in which judgment is entered by default as a result of the failure of any defendant to respond to the complaint, the sum of \$300. (Effective 1/1/07)
 - (2) In cases in which at least one (1) defendant has filed an answer or responsive pleading, but which are uncontested at trial, the sum of \$400. (Effective 1/1/07)
 - (3) In cases contested at trial, the sum of \$500. (Effective 1/1/07)
- (b) Where a party in a residential unlawful detainer action wishes to seek attorney fees in excess of the fees set forth in Rule 3.17.13(a), such fees may be awarded only upon application and declaration setting forth good cause therefor in cases in which no answer or response has been filed by any defendant, or upon regularly noticed motion in cases in which an answer or response has been filed by at least one (1) defendant. (Effective 1/1/07)
- (c) In actions for unlawful detainer for possession of non-residential property, the prevailing party may recover, if entitled to recovery of attorney's fees, such amount as may be awarded upon ex parte application and declaration in cases in which no defendant appeared, or upon properly noticed motion for an award of attorney's fees in actions in which at least one (1) defendant has appeared. (Effective 1/1/07)

Rule
3.17.14

Order to Show Cause Re Dismissal (Effective 1/1/07)

- (a) An order to show cause re dismissal will be taken off calendar if a trial date has been set, a request to set case for trial has been filed, the case is dismissed, or if there has been a settlement or other final disposition of the entire matter. (Effective 1/1/07)
- (b) All parties who have made a general appearance in the case shall attend the hearing on the order to show cause, either in person or by telephonic appearance. (Effective 1/1/07)

Rule
3.17.15

Motion to Set Aside Default and Vacate Default Judgment and/or for Stay of Execution of Judgment (Effective 1/1/07)

- (a) Ex parte applications for orders shortening time for hearing on a motion to vacate a default judgment and/or set aside a default, or for a stay of execution of a writ of possession shall comply with California Rules of Court Rule 3.1200. (Effective 1/1/07)
- (b) Except for good cause shown, only one (1) request for stay of execution will be granted per case, and stays of execution will be limited to seven (7)

days from the date originally scheduled for the lock-out to occur.
(Effective 1/1/07)

- (c) Except for good cause shown, no stay of execution will be granted in cases settled or disposed of by agreement of the parties or by stipulation of the parties, unless the parties have agreed otherwise in writing or on the record in open court. (Effective 1/1/07)
- (d) Except for good cause shown, motions to vacate a default judgment and/or to set aside a default shall not be granted ex parte. (Effective 1/1/07)

Rule

3.17.16

Failure to Comply with Rules (Effective 1/1/07)

Any failure to comply with these rules shall result in the issuance of an order to show cause why sanctions, including monetary sanctions, issue sanctions, evidence sanctions or terminating sanctions, should not be imposed. (Effective 1/1/07)